

Appln. No. 10/782,112
Amendment dated August 29, 2005
Reply to Office Action mailed May 31, 2005

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REMARKS

Reconsideration is respectfully requested.

Entry of the above amendments is courteously requested in order to place all claims in this application in allowable condition and/or to place the non-allowed claims in better condition for consideration on appeal.

Claim 9 remains in this application. Claims 1 through 8 have been cancelled. No claims have been withdrawn or added.

Claims 1 through 4 and 6 through 9 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Kurpeski in view of Yoshida.

Claim 9, particularly as amended, requires: "each of said base portions of said massaging members having a width, the width of each of said base portions tapering thinner toward a middle section of said base portions and the width of each of said base portions expanding wider toward said proximal and distal ends to form a necked profile at the middle section of said base portions". This feature, shown in Figure 3 of the drawings, permits each of the base portions to bend at substantially the same location on the messaging member as other messaging members, which provides a more uniform bending by the members and application of pressure to the body of the user. Claim 9 also requires "each of said bulbous portions of said massaging members having a width, said bulbous portions of adjacent said massaging members being spaced from each other a distance substantially equal to the width of said bulbous portions". This relatively close spacing of the bulbous members provides an effective massaging effect on the body of the user that is less intense than, for example, the relatively small and widely spaced bristles of the Kurpieski back scratcher. The bristles of the Kurpieski back scratcher are intended to produce a more focused, intense contact with the body that is effective for alleviating an

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itch, but is not effective for massaging the body in a relaxing manner. In fact, the bristles of the Kurpieski back scratcher have almost the opposite purpose and effect as the present invention, while the pin-like bristles of the back scratcher is better suited to be applied for a short duration to alleviate an itch that strikes the user, the claimed structure of the present invention is much more well suited to a longer duration application to relax the muscles of the user's back. Because of the differences in the structure of the claimed invention and the structure of the Kurpieski back scratcher, neither is particularly well-suited for performing the function of the other.

It is therefore submitted that the cited patents, and especially the allegedly obvious combination of Kurpieski and Yoshida set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claim 9.

Withdrawal of the §103(a) rejection of claim 9 is therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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